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BY FEDERAL EXPRESS

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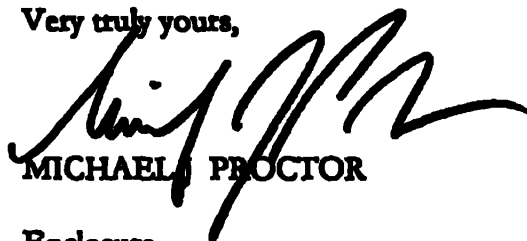
Mary Dove
Secretary of the Commission
Federal Election Commission
999 E Street, N W.
Washington, D C 20463

Re *Dolores Valdez*, MUR 5758

Dear Ms Dove

On behalf of Dolores Valdez, enclosed please find one original and ten copies of Dolores Valdez's Response to General Counsel's Brief in the above-captioned matter Ms Valdez greatly appreciates the Commission's attention to this matter

Very truly yours,



MICHAEL J PROCTOR

Enclosure

cc Audra Wassom, Office of the General Counsel
(w/ 3 copies of enclosure)

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 In the Matter of

**DOLORES VALDEZ'S RESPONSE TO
GENERAL COUNSEL'S BRIEF**

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13 **DOLORES VALDEZ**

MUR 5758

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1 **I. INTRODUCTION**

2 There are some cases, rare though they may be, where—even if the General Counsel's
3 Office has alleged probable cause—the right thing to do is for the Commission to exercise
4 discretion and refrain from further proceedings. This is such a case. Dolores Valdez's role in
5 this matter was nothing more than that of a secretary whose job was to follow instructions from
6 her boss, a powerful, well-respected attorney. There is no suggestion in the Commission's
7 evidence that Ms. Valdez stood to gain personally in any way from her alleged actions, beyond
8 the simple benefit of keeping her job. In this regard, Ms. Valdez is not materially different from
9 other alleged conduits in this matter, such as Hilda Escobar, Else Latinovic, and Bert Rodriguez.
10 The Commission has seen fit to resolve any proceedings against these individuals without
11 recourse to additional administrative action. Ms. Valdez requests that the Commission resolve
12 the matter pending against her in a similar fashion. The Commission could, for example, make a
13 finding of probable cause but decline to institute further proceedings. The Commission is
14 respectfully requested to consider such an alternative.

15 **II. BACKGROUND¹**

16 Ms. Valdez was born in Durango, Mexico in At the age of nine, Ms. Valdez, along
17 with her parents and six siblings, immigrated to the United States. Ms. Valdez's native tongue is
18 Spanish, and English is her second language.

19 Not long after graduating from high school, Ms. Valdez began working as a legal
20 secretary, and has now worked as a legal secretary for over twenty years. It is literally the only
21 job she has known. In 2004, Ms. Valdez became a United States citizen. Ms. Valdez has never
22 been convicted of any criminal offense.

23 The instant allegations concern political contributions by Dolores Valdez's employer,
24 boss, and direct supervisor, trial attorney Pierce O'Donnell. Mr. O'Donnell is one of the nation's
25 leading trial lawyers, a graduate of both Georgetown and Yale, and a former clerk to United
26 States Supreme Court Justice Byron R. White. He hired Ms. Valdez as a secretary and has
27 always had the power to terminate her employment.

28
1 Ms. Valdez makes no legally binding admissions through the statements contained in this brief

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1 It is alleged that, in 2003, Mr O'Donnell laundered \$32,000 in campaign contributions to
2 John Edwards's presidential campaign committee, Edwards for President The allegation is that
3 Mr O'Donnell wrote reimbursement checks to a variety of his employees (and family and
4 friends), as well as his employees' family and friends

5 It is further alleged that Ms Valdez helped her boss Mr O'Donnell in these endeavors
6 That assistance came, it is alleged, in two ways First, it is alleged that Ms Valdez made "direct
7 reimbursements" to one individual (Bart Rodriguez) in the amount of \$2,000, for which his
8 Valdez was in turn reimbursed by Mr O'Donnell² This conduct is similar to that of these other
9 employees (Mr Rodriguez, Else Latinovic and Hilda Escobar), who together made similar
10 "direct reimbursements" to other people Mr Rodriguez, for example, made "direct
11 reimbursements" in the amount of \$4,000 to his son and his son's girlfriend Ms Latinovic made
12 "direct reimbursements" in the amount of \$6,000 to her mother and two family friends Ms
13 Escobar made "direct reimbursements" of \$2,000 to her father Unlike Ms Valdez, the General
14 Counsel's office is not seeking a probable cause finding against Mr Rodriguez, Ms Latinovic or
15 Ms Escobar

16 The second way in which it is alleged that Ms Valdez helped her boss, Mr O'Donnell, is
17 by what the General Counsel's brief terms "facilitated reimbursements" This means no more
18 than it is alleged that, as secretary, Ms Valdez acted as Mr O'Donnell's administrative assistant
19 in connection with the political contributions at issue Essentially, it is alleged, that Mr
20 O'Donnell sought to get his employees to make reimbursed contributions and that, to carry this
21 out, Mr O'Donnell got his secretary, Ms Valdez, to help accomplish this Most of the
22 allegations involved—such as transmitting messages from Mr O'Donnell and other employees
23 and delivering paperwork—are tasks that Ms Valdez was required to perform (legally) in the
24 other aspects of her job

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28 ² It is also alleged that Ms Valdez made a simple "direct reimbursement" in the amount of
\$2,000 to her sister (Maria Saucedo) However, as the General Counsel's brief acknowledges,
Ms Saucedo never made a contribution to the Edwards campaign

1 **III. THE RECORD ESTABLISHES THAT MS. VALDEZ ONLY EVER ACTED IN**
2 **HER CAPACITY AS MR. O'DONNELL'S LEGAL SECRETARY**

3 The record developed by the Office of the General Counsel establishes at most that Ms
4 Valdez acted as a "secretary," in an administrative support role, in connection with Mr
5 O'Donnell's alleged contributions. In all but one of the transcripts of interviews conducted by
6 the Commission in its investigation of this matter, each witness, under oath, described Ms
7 Valdez as acting, not in her own behalf, but purely in her capacity as Mr O'Donnell's assistant.
8 These witnesses also stated that Ms Valdez, like other staff members at O'Donnell Shaeffer
9 ("the firm"), was required to do what Mr O'Donnell asked. For example, when Mr Rodriguez
10 was asked who helped Mr O'Donnell, he responded "Dolores would help him. Well, that was
11 his assistant so I would imagine she would help him with whatever he needed." (Rodriguez
12 Tr 34 23-35 4.) When asked what Mr O'Donnell's reaction would be if a staff member balked
13 at Mr O'Donnell's demands, Mr Rodriguez stated "If it was work related, I'm sure if it was—
14 he just—if you say no, you've got to say why not. You just don't tell him no." (Rodriguez Tr
15 57 9-15.)

16 Similarly, when Hilda Escobar was asked to describe Ms Valdez's job, she replied

17 A I think at the end of the day the best thing to say is whatever are
18 Pierce's needs, she [Ms Valdez] makes sure it gets done

19
20 Q And when Dolores asked people to do something, is it usually
21 presumed that she's asking on Pierce's behalf?

22 A Yes

23 (Escobar Tr 23 13-16, 24 8-11.)

24 Indeed, Ms Escobar and Mr Rodriguez both testified that they believed any request for a
25 contribution was a request from Mr O'Donnell, and Ms Valdez merely the mouthpiece

26 Q And when Dolores would ask you [for a contribution], did you
27 think or assume that she was asking you on behalf of Pierce
28 O'Donnell?

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A Yes

(Rodriguez Tr 38 20-23)

Q Did you feel this was a request [for a contribution] you could say no to?

A At the time I didn't think about it I mean it was for Pierce I just said yes Whatever Pierce wants, that's fine

(Escobar Tr 35 17-23)

However, the testimony that sheds the most light on Ms Valdez's alleged role in soliciting contributions on behalf of Mr O'Donnell came from Ms Latinovic, the firm's former administrator According to Ms Latinovic, she and Ms Valdez discussed their discomfort with soliciting contributions from firm employees, and Ms Valdez then shared their concerns with Mr O'Donnell However, as Ms Latinovic testified, in the end Mr O'Donnell simply instructed Ms Valdez to do as she was told

Q And how did you come to make this contribution?

A Dolores had come into my office and told me that -- I believe she said that Pierce had pledged some money and that she was asked to have the employees contribute to fulfill the amount of money that was pledged

Q Did she say anything else to you?

A That she [Dolores Valdez] was very unhappy that she was requested to do this

Q Anything else?

A She was just not happy to do this

Q And when you asked her to talk with Pierce about this, what did she say in response to that?

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1 A She did She turned around, and she said I will And then she
2 went into his office evidently, but I don't know when or when
3 she talked to him
4

5 Q And did she report back to you after she spoke with him?

6 A She came back to my office she came back and said that she
7 talked to him, and he said that she needs to do what he asks her
8 to do, her job

9 (Latinovic Tr 66 24-67 8, 69 3-16 (emphasis added))

10 The testimony from these witnesses—all of whom had worked with Mr O'Donnell and
11 Ms Valdez for several years—paints a clear picture of Ms Valdez's position within the firm
12 Her job was dictated by Mr O'Donnell's demands, and, when he requested something, it was her
13 job, literally, to carry out the request³

14 Moreover, none of these witnesses attributed any particular knowledge of campaign
15 contributions, or election law, to Ms Valdez (See Latinovic Tr 104 8-13, Escobar Tr
16 67 23-68 3) Further, it appears that no firm employee, if asked for a political contribution by
17 Ms Valdez, had any misapprehension that the request was anything other than a request from Mr
18 O'Donnell Similarly, according to Ms Escobar, Ms Latinovic, and Mr Rodriguez, and
19 supported by the documentary record, the reimbursements they received for their contributions
20 were either directly or ultimately from Mr O'Donnell, not Ms Valdez (See Escobar Tr 35 9-
21 13, 38 6-8, 47 25-48 9, 52 3-4, Rodriguez Tr 52 19-53 3, 68 17-24, 79 12-14, Latinovic Tr
22 77 8-10)
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27 ³ Indeed, Ms Latinovic, the law firm administrator, testified that she could probably not ask Ms
28 Valdez to do something without first clearing it with Mr O'Donnell, because Ms Valdez was
Mr O'Donnell's assistant, and he asked her "to do many, many things," including taking his dry
cleaning or getting his car fixed (Latinovic Tr 22 5-17)

1 **IV. MS. VALDEZ'S ALLEGED ACTIONS ARE NOT MATERIALLY DIFFERENT**
2 **THAN THOSE OF OTHER ALLEGED CONDUITS**

3 The Commission has exercised its discretion to resolve the proceedings against Mr
4 Rodriguez, Ms Escobar, and Ms Latinovic Yet the actions of these individuals in being
5 reimbursed for contributions, and soliciting others to make contributions that would also be
6 reimbursed, are no different than the allegations against Ms Valdez

7 It is alleged that Ms Valdez, like Mr Rodriguez, Ms Escobar, and Ms Latinovic, was an
8 employee at the firm, worked for Mr O'Donnell, and, according to the Commission's record,
9 was asked by Mr O'Donnell to solicit others to make contributions to the John Edwards for
10 President campaign Ms Valdez should not be perceived as more culpable than these other
11 individuals, who not only made contributions, but also asked friends and family members—
12 outside of the firm—to do the same If anything, Ms Valdez was even less able than Mr
13 Rodriguez, Ms Escobar, or Ms Latinovic in acceding to Mr O'Donnell's requests Unlike these
14 individuals Ms Valdez worked directly with Mr O'Donnell, and *only* for him If Mr O'Donnell
15 asked Ms Valdez to solicit a contribution from a third party, or to deliver a reimbursement, she
16 wasn't merely doing him a favor by complying—she was doing her job

17 We would urge that Ms Valdez should not be treated more harshly than Ms Escobar, Mr
18 Rodriguez, and Ms Latinovic, instead the Commission should exercise its discretion to resolve
19 the proceedings against Ms Valdez as it did with these other alleged conduits

20 **V. MS VALDEZ HAS COOPERATED WITH THE COMMISSION TO THE**
21 **FULLEST EXTENT POSSIBLE GIVEN THE THREAT OF CRIMINAL**
22 **PROSECUTION**

23 Since first being notified of the Commission's investigation of this matter, Ms Valdez
24 has sought to cooperate For example, in response to the Commission inquiries, Ms Valdez
25 voluntarily produced her own bank records relevant to the investigation, and when asked for
26 documents that were not in her possession, she furnished the request to those she believed to be
27 in possession of the documents (See Letter of M Proctor to B Levine (August 10, 2005))

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& PETIT

Ms Valdez's cooperation with the Commission has been limited only by the simultaneous threat of possible federal criminal action Ms Valdez's fear of criminal prosecution is well-founded, indeed she was criminally prosecuted in California with respect to Mr O'Donnell's alleged contributions to the James Hahn mayoral campaign⁴ Although these state criminal proceedings were recently resolved, Ms Valdez is not immune from federal criminal prosecution She now knows from experience that she cannot dismiss the possibility of future criminal prosecution lightly, and she must safeguard her rights so long as there remains the possibility of criminal proceedings against her

VI. MS. VALDEZ REQUESTS THAT THE COMMISSION EXERCISE ITS DISCRETION TO RESOLVE THESE PROCEEDINGS

The Commission's record establishes that Ms Valdez's role in this matter was that of a secretary who was trying to do her job There is no evidence suggesting that Ms Valdez sought to receive any personal gain from her alleged actions, other than perhaps keeping her job, nor does the Commission appear to perceive Ms Valdez's alleged actions as constituting a knowing or willful violation of federal election laws Ms Valdez is no different than Ms Latinour, Mr Rodriguez, or Mrs Esobar She was an employee who acted solely at the direction of her boss, a powerful attorney with far more education and experience than Ms Valdez, a high-school graduate and immigrant to the United States And, to the extent possible, she has cooperated with the Commission's investigation

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⁴ In addition to the Los Angeles City Ethics Commission proceedings referenced in the Office of General Counsel brief, the Los Angeles County District Attorney also initiated a criminal action against Ms Valdez - as well as Mr O'Donnell and six other alleged conduits Eventually, those criminal charges were dismissed

1 Ms Valdez therefore respectfully requests that the Commission exercise its discretion to
2 resolve this matter without further administrative action

3 DATED December 4, 2006

Respectfully submitted,

4 CALDWELL, LESLIE, PROCTOR & PETTIT
5 A Professional Corporation

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8 By 
9 MICHAEL J. PROCTOR
10 Attorneys for DOLORES VALDEZ
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